

and regulations as the Board of Governors of the Federal Reserve System may prescribe (A) to permit under specified conditions and for a limited period any such member, broker, or dealer to maintain a credit initially extended in conformity with the rules and regulations of the Board of Governors of the Federal Reserve System, and (B) to permit the extension or maintenance of credit in cases where the extension or maintenance of credit is not for the purpose of purchasing or carrying securities or of evading or circumventing the provisions of paragraph (1) of this subsection."

Subsec. (d). Pub. L. 104-290, §104(a)(2), amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: "It shall be unlawful for any person not subject to subsection (c) of this section to extend or maintain credit or to arrange for the extension or maintenance of credit for the purpose of purchasing or carrying any security, in contravention of such rules and regulations as the Board of Governors of the Federal Reserve System shall prescribe to prevent the excessive use of credit for the purchasing or carrying of or trading in securities in circumvention of the other provisions of this section. Such rules and regulations may impose upon all loans made for the purpose of purchasing or carrying securities limitations similar to those imposed upon members, brokers, or dealers by subsection (c) of this section and the rules and regulations thereunder. This subsection and the rules and regulations thereunder shall not apply (A) to a loan made by a person not in the ordinary course of his business, (B) to a loan on an exempted security, (C) to a loan to a dealer to aid in the financing of the distribution of securities to customers not through the medium of a national securities exchange, (D) to a loan by a bank on a security other than an equity security, or (E) to such other loans as the Board of Governors of the Federal Reserve System shall, by such rules and regulations as it may deem necessary or appropriate in the public interest or for the protection of investors, exempt, either unconditionally or upon specified terms and conditions or for stated periods, from the operation of this subsection and the rules and regulations thereunder."

1994—Subsec. (g). Pub. L. 103-325 inserted "or a small business related security" after "mortgage related security".

1984—Subsec. (g). Pub. L. 98-440 added subsec. (g).

1970—Subsec. (f). Pub. L. 91-508 added subsec. (f).

1968—Subsec. (a). Pub. L. 90-437, §1(1), struck out "registered on a national securities exchange" after "(other than an exempted security)".

Subsec. (c). Pub. L. 90-437, §1(2), struck out "who transacts a business in securities through the medium of any such member" after "any broker or dealer", in par. (1) struck out "registered on a national securities exchange" after "(other than an exempted security)", and in par. (2) substituted "other than securities" for "other than exempted securities and/or securities registered upon a national securities exchange".

Subsec. (d). Pub. L. 90-437, §1(3), struck out "registered on a national securities exchange" after "the purpose of purchasing or carrying any security", and "registered on national securities exchanges" after "the purpose of purchasing or carrying securities".

#### CHANGE OF NAME

Act Aug. 23, 1935, in subsec. (e), substituted "Board of Governors of the Federal Reserve System" for "Federal Reserve Board".

#### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-508 effective on first day of seventh calendar month which begins after Oct. 26, 1970, except as otherwise provided in section 401(c) of Pub. L. 91-508, see section 401(a) of Pub. L. 91-508, set out as a note under section 1951 of Title 12, Banks and Banking.

Section 401(c) of Pub. L. 91-508 provided that: "The Board of Governors of the Federal Reserve System may

by regulation provide that the amendment made by title III [amending this section] shall be effective on any date not earlier than the publication of the regulation in the Federal Register and not later than the first day of the thirteenth calendar month which begins after the date of enactment [Oct. 26, 1970]."

#### VALIDITY OF RULES AND REGULATIONS

Section 301(b) of Pub. L. 91-508 provided that: "The amendment made by subsection (a) of this section [amending this section] does not affect the continuing validity of any rule or regulation under section 7 of the Securities Exchange Act of 1934 [this section] in effect prior to the effective date of the amendment."

#### § 78h. Restrictions on borrowing and lending by members, brokers, and dealers

It shall be unlawful for any registered broker or dealer, member of a national securities exchange, or broker or dealer who transacts a business in securities through the medium of any member of a national securities exchange, directly or indirectly—

(a) In contravention of such rules and regulations as the Commission shall prescribe for the protection of investors to hypothecate or arrange for the hypothecation of any securities carried for the account of any customer under circumstances (1) that will permit the commingling of his securities without his written consent with the securities of any other customer, (2) that will permit such securities to be commingled with the securities of any person other than a bona fide customer, or (3) that will permit such securities to be hypothecated, or subjected to any lien or claim of the pledgee, for a sum in excess of the aggregate indebtedness of such customers in respect of such securities.

(b) To lend or arrange for the lending of any securities carried for the account of any customer without the written consent of such customer or in contravention of such rules and regulations as the Commission shall prescribe for the protection of investors.

(June 6, 1934, ch. 404, title I, §8, 48 Stat. 888; Aug. 23, 1935, ch. 614, §203(a), 49 Stat. 704; Pub. L. 94-29, §5, June 4, 1975, 89 Stat. 109; Pub. L. 98-440, title I, §103, Oct. 3, 1984, 98 Stat. 1690; Pub. L. 103-325, title II, §204, Sept. 23, 1994, 108 Stat. 2199; Pub. L. 104-290, title I, §104(b), Oct. 11, 1996, 110 Stat. 3423.)

#### AMENDMENTS

1996—Pub. L. 104-290 redesignated subsecs. (b) and (c) as (a) and (b), respectively, and struck out former subsec. (a) which related to borrowing in ordinary course of business as broker or dealer on any security, except exempted security, registered on national securities exchange.

1994—Subsec. (a). Pub. L. 103-325 inserted "or a small business related security" after "mortgage related security" in last sentence.

1984—Subsec. (a). Pub. L. 98-440 inserted provision that no person shall be deemed to have borrowed within the ordinary course of business, within the meaning of this subsection, by reason of a bona fide agreement for delayed delivery of a mortgage related security under certain conditions.

1975—Pub. L. 94-29, §5(1), substituted "any registered broker or dealer, member of a national securities exchange, or broker or dealer who transacts a business in securities through the medium of any member of a national securities exchange" for "any member of a national securities exchange, or any broker or dealer who

transacts a business in securities through the medium of any such member” in provisions preceding subsec. (a).

Subsecs. (b) to (d). Pub. L. 94-29, §5(2), redesignated subsecs. (c) and (d) as (b) and (c), respectively, and in subsec. (c) as so redesignated inserted “or in contravention of such rules and regulations as the Commissioner shall prescribe for the protection of investors” after “written consent of such customer”. Former subsec. (b), which covered the maximum allowable aggregate indebtedness of brokers, was struck out.

#### CHANGE OF NAME

Act Aug. 23, 1935, substituted “Board of Governors of the Federal Reserve System” for “Federal Reserve Board”.

#### EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

#### TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

### § 78i. Manipulation of security prices

#### (a) Transactions relating to purchase or sale of security

It shall be unlawful for any person, directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce, or of any facility of any national securities exchange, or for any member of a national securities exchange—

(1) For the purpose of creating a false or misleading appearance of active trading in any security registered on a national securities exchange, or a false or misleading appearance with respect to the market for any such security, (A) to effect any transaction in such security which involves no change in the beneficial ownership thereof, or (B) to enter an order or orders for the purchase of such security with the knowledge that an order or orders of substantially the same size, at substantially the same time, and at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties, or (C) to enter any order or orders for the sale of any such security with the knowledge that an order or orders of substantially the same size, at substantially the same time, and at substantially the same price, for the purchase of such security, has been or will be entered by or for the same or different parties.

(2) To effect, alone or with one or more other persons, a series of transactions in any security registered on a national securities exchange or in connection with any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security creating actual or apparent active trading in such security, or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others.

(3) If a dealer or broker, or other person selling or offering for sale or purchasing or offer-

ing to purchase the security or a security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security, to induce the purchase or sale of any security registered on a national securities exchange or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security by the circulation or dissemination in the ordinary course of business of information to the effect that the price of any such security will or is likely to rise or fall because of market operations of any one or more persons conducted for the purpose of raising or depressing the price of such security.

(4) If a dealer or broker, or the person selling or offering for sale or purchasing or offering to purchase the security or a security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security, to make, regarding any security registered on a national securities exchange or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security, for the purpose of inducing the purchase or sale of such security or such security-based swap agreement, any statement which was at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, and which he knew or had reasonable ground to believe was so false or misleading.

(5) For a consideration, received directly or indirectly from a dealer or broker, or other person selling or offering for sale or purchasing or offering to purchase the security or a security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security, to induce the purchase of any security registered on a national securities exchange or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security by the circulation or dissemination of information to the effect that the price of any such security will or is likely to rise or fall because of the market operations of any one or more persons conducted for the purpose of raising or depressing the price of such security.

(6) To effect either alone or with one or more other persons any series of transactions for the purchase and/or sale of any security registered on a national securities exchange for the purpose of pegging, fixing, or stabilizing the price of such security in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

#### (b) Transactions relating to puts, calls, straddles, or options

It shall be unlawful for any person to effect, by use of any facility of a national securities exchange, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors—

(1) any transaction in connection with any security whereby any party to such trans-